

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Rusell Divincenzo,

Plaintiff,

v.

Synchrony Bank f/k/a GE Capital Retail Bank;
and DOES 1-10, inclusive,

Defendants.

Civil Action No.: _____

COMPLAINT

For this Complaint, the Plaintiff, Rusell Divincenzo, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of the Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Rusell Divincenzo ("Plaintiff"), is an adult individual residing in Buffalo, New York, and is a "person" as defined by 47 U.S.C.A. § 153(39).
4. The Defendant, Synchrony Bank f/k/a GE Capital Retail Bank ("Synchrony Bank"), is a California business entity with an address of 950 Forrer Boulevard, Kettering, Ohio 45420818, and is a "person" as defined by 47 U.S.C.A. § 153(39).
5. Does 1-10 (the "Agents") are individual agents employed by Synchrony Bank and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be

joined as parties once their identities are disclosed through discovery.

6. Synchrony Bank at all times acted by and through one or more of the Agents.

FACTS

7. In or around June 2014, Synchrony Bank began calling Plaintiff's cellular telephone, number 716-XXX-5514, using an automated telephone dialing system ("ATDS") and/or by using an artificial or prerecorded voice.

8. When Plaintiff answered calls from Synchrony Bank he heard a prerecorded message instructing Plaintiff to "press 1 if you are Susan, press 2 if you are not."

9. When Plaintiff pressed 2 the message repeated that Synchrony Bank was calling for Susan and asked if she was available.

10. After numerous attempts, Plaintiff was unable to speak with a live representative to get the calls to stop.

11. Plaintiff never provided his cellular telephone number to Synchrony Bank and never provided his consent to be called by Synchrony Bank.

12. Furthermore, Synchrony Bank continued to call Plaintiff's cellular telephone after Plaintiff pressed 2 on numerous occasions to indicate that he was not the person Synchrony Bank was calling for.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47 U.S.C. § 227, et seq.

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. At all times mentioned herein and within the last four years, Defendants called Plaintiff on her cellular telephone using an automatic telephone dialing system ("ATDS") and/or

by using a prerecorded or artificial voice.

15. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

16. The calls from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

17. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

18. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: August 27, 2014

Respectfully submitted,

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: August 27, 2014

Respectfully submitted,
Russell Divincenzo

By 

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